U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. HARTONCZYK and U.S. POSTAL SERVICE,
POST OFFICE, Edison, NJ

Docket No. 00-2122; Submitted on the Record;
Issued October 25, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[1] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[2]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.[3] This burden includes the submission of a detailed

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[4]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office of Workers' Compensation Programs as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[5] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[6]

On June 14, 1999 appellant, then a 52-year-old letter carrier, filed a claim alleging that he sustained an emotional condition due to an incident at work on June 11, 1999. Appellant later expanded his claim to allege that his emotional condition was also due to other incidents and conditions at work.[7] By decision dated November 1, 1999, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. By decision dated February 9, 2000, the Office affirmed its November 1, 1999 decision. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant claimed that on June 10, 1999 he was subjected to harassment and discrimination when a letter was distributed in the workplace which he felt criticized him for his limited-duty status. Appellant indicated that he was humiliated by the letter and felt that coworkers looked down on him as a result. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[8] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[9]

The record contains a copy of the letter dated June 3, 1999, which appellant asserted was distributed in the workplace by coworkers on June 10, 1999. The letter was written by an

[4] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[5] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[6] *Id.*

[7] The record reflects that appellant receives a 30 percent military disability for service-connected nervous condition.

[8] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[9] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

unknown individual[10] to Phillip DeCarolis, the postmaster, at the employing establishment. In essence, the author of the letter took issue with the manner in which the employing establishment made use of limited-duty employees.[11] As noted above, appellant felt that the letter was directed towards him, but the letter does not identify any specific individuals. Appellant alleged that he could be identified by the examples of limited-duty work situations provided by the author, but he did not sufficiently articulate the basis for this claim.

Moreover, the letter does not contain language that would rise to the level of harassment or discrimination if directed towards any individual. The letter essentially presented the author's opinion on the use of limited-duty workers and does not contain any vulgar or abusive language. Moreover, it does not appear that the author of the letter intended to present its contents to appellant or the workplace at large. The evidence of record suggests that the letter was initially delivered to a supervisor, Carl Smith,[12] for review and that an unknown individual removed the letter from Mr. Smith's desk and distributed it in the workplace. Under these circumstances, appellant's reaction to the letter must be considered to be self-generated. For these reasons, appellant has not established that the distribution of the June 3, 1999 letter on June 10, 1999 constitutes harassment or discrimination.

Appellant also generally alleged that supervisors and coworker created a "slanderous, uncomfortable and unprofessional environment" and ridiculed him for filing compensation claims. He also alleged that on June 10, 1999 Mr. Smith made a vulgar comment to him upon observing that he was ill. With respect to these matters, the employing establishment denied that appellant was subjected to harassment or discrimination. Appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors or coworkers.[13] Appellant alleged that supervisors and coworkers made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[14] Thus, appellant has not established a compensable employment factor under the Act with respect to these claimed incidents of harassment and discrimination.

Appellant alleged that the employing establishment wrongly allowed the June 3, 1999 letter to be distributed in the workplace and mishandled the situation after the letter had been distributed. He further alleged that it was improper for the employing establishment to require him to undergo "vascular" testing to assess his ability to tolerate cold conditions. Appellant

[10] The name of the author of the letter was blacked out.

[11] The author suggested that it was unfair to workers not on limited duty to allow limited-duty workers to work overtime and to perform jobs which were ostensibly beyond their work restrictions. The author provided four apparent examples of claimed misuse of limited-duty workers. For example, the author asked rhetorically, "How can an employee who holds a full 958 position work 10 hours a day and his day off?".

[12] Mr. Smith indicated that he blacked out the name of the letter's author.

[13] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[14] *See William P. George*, 43 ECAB 1159, 1167 (1992).

claimed that Mr. Smith wrongly delivered a talk to the employees on June 10, 1999 which concerned the use of limited-duty employees.

The Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[15] Although the handling of confidential information, the management of employee medical files and the assignment of work duties are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[16] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[17] Appellant has not submitted sufficient evidence to show that the employing establishment committed error or abuse with respect to these matters. While it was unfortunate that the June 3, 1999 letter was distributed in the workplace, appellant has not shown how the employing establishment's actions with respect to this matter would rise to the level of error or abuse.[18] Thus, appellant has not established a compensable employment factor under the Act with regard to administrative matters.

Appellant alleged that he was forced to work beyond restrictions, which were instituted in connection with a frostbite injury he suffered at work. The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.[19] However, appellant did not submit sufficient evidence to support the factual aspect of his claim that he was forced to work beyond these restrictions.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.[20]

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[15] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[16] *Id.*

[17] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[18] The employing establishment immediately addressed the matter on June 10, 1999 and encouraged mutual respect among employees.

[19] *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

[20] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The February 9, 2000 and November 1, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 25, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member